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7 THEODORE KRAMER and
8 THOMAS SCARAMELLINO

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SAN MATEO

11 **Six4Three, LLC**, a Delaware limited liability
12 company,

13 Plaintiff;

14 v.

15 **Facebook, Inc.**, a Delaware corporation;
16 **Mark Zuckerberg**, an individual;
17 **Christopher Cox**, an individual; **Javier**
18 **Olivan**, an individual; **Samuel Lessin**, an
individual; **Michael Vernal**, an individual;
Ilya Sukhar, an individual; and **Does 1-50**,
inclusive,

19 Defendants.

Case No. CIV533328

Assigned for all purposes to Hon. V.
Raymond Swope, Dep't 23

**THIRD PARTY THOMAS SCARAMELLINO AND
THEODORE KRAMER'S OPPOSITION TO
DEFENDANT FACEBOOK, INC.'S EX PARTE
APPLICATION RE THOMAS SCARAMELLINO'S
ADDRESS**

FILED
SAN MATEO COUNTY

MAR 25 2019

Clerk of the Superior Court
DEPUTY CLERK

CIV533328
EPOP
Ex Parte Opposition
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INTRODUCTION

Facebook's *Ex Parte* Application is a waste of the time and resources of the parties and the Court. It cites no authorities that would require Counsel to verify the *already-provided* address of a non-party to this litigation. Further, the third parties had indicated a willingness to confirm this address on the basis of a cooperative process. Rather than compromise and cooperate, Facebook attempts to twist normal negotiations as evidence of "disrespect [of] this Court's orders," while Facebook is actively violating those orders by issuing unauthorized deposition notices. This pattern of unnecessary, repetitive *Ex Parte* requests cannot be permitted to continue, and the Court should deny this unsubstantiated *Ex Parte* Application.

ARGUMENT

I. THERE IS NO BASIS FOR FACEBOOK'S *EX PARTE* APPLICATION.

A. Counsel for Mr. Scaramellino are not Required to Confirm his Address.

Mr. Scaramellino is not a party to this action, and Defendant cites no case, order, and no statute that would require counsel to verify Mr. Scaramellino's current address beyond the addresses already in Defendant's possession. That address was provided by Birnbaum & Godkin in November and cited by the Court in its November 30, 2018 Order, which Counsel for Mr. Scaramellino provided to Facebook once more on March 22, 2019. Russo Decl., Exh. 4. Indeed, Defendant's *Ex Parte* Application barely cites to any law at all. Counsel for Plaintiff Six4Three, LLC have already provided Mr. Scaramellino's address to Defendant. There is no need to waste resources on further litigation of this matter; the Court should order that this harassment cease.

B. Third Party Scaramellino Offered to Cooperate with Facebook.

Despite being under no obligation to do so, and despite the scorched-earth tactics counsel for Facebook have employed after every attempt at compromise so far, including filing a confidential proposed settlement with the Court and harassing a foreign Third Party Expert whose only crime was being mentioned on some emails and tagged on a tweet, Mr. Scaramellino indicated that he was willing to cooperate with Facebook on the condition that Facebook answer a short series of simple questions that have been presented to them without a meaningful response since November. Facebook contends that these questions have already been briefed

1 before the Court. If this is the case, wouldn't it be simpler to forward copies of that briefing to
2 counsel instead of turning to the Court for *Ex Parte* relief? Instead of meeting and conferring in
3 good faith, Facebook filed fifty-nine (59) pages of material with the Court as part of a needless
4 attempt to secure information they already have. This *Ex Parte* Application was and is
5 unnecessary, and the Court should deny it as such.

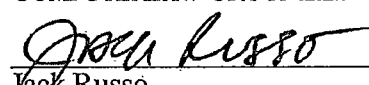
6 **II. FACEBOOK IS MISUSING THE *EX PARTE***
7 **PROCESS TO CONTRAVENE THIS COURT'S ORDER.**

8 Facebook now generating and serving deposition subpoenas in conflict with this Court's
9 order that Depositions at this moment would be premature. Notwithstanding this Court's Order,
10 Facebook has now served Deposition subpoenas on Messrs. Scaramellino, Gross, and Godkin.
11 Russo Decl. Exh. 5, 6, 7. This Court's March 15 Order on Discovery held that "requests to
12 compel depositions are premature given Facebook is requesting production of the documents
13 prior to the deposition. Scheduling of depositions are contingent on production, which shall be
14 the subject of a further discovery conference on April 26, 2019." Order on Motion to Open
15 Discovery, 12:18-20. Like other attempts to engage meaningfully, Facebook ignored questions
16 from counsel regarding its violations of the Court's Order.

17 **CONCLUSION**

18 Facebook presents no authority to support this unnecessary *Ex Parte* Application.
19 Facebook already has Mr. Scaramellino address. Further, in the days leading up to the filing of
20 this *Ex Parte* Facebook improperly served multiple Deposition Subpoenas and refused to engage
21 in a mutual, cooperative process. Instead Facebook filed the present *Ex Parte* Application to
22 waste the time and resources of the third parties and the Court. The Court should not allow this
23 misconduct to continue, and this *Ex Parte* application should be denied.

24 Dated: March 22, 2019

25 Respectfully submitted,
26 COMPUTERLAW GROUP LLP
27 By: 
28 Jack Russo
Attorneys for Third Parties
THEODORE KRAMER and
THOMAS SCARAMELLINO